

STATE OF MICHIGAN
COURT OF APPEALS

JOHN CARTER, III,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 189448

Wayne Circuit Court

LC No. 94-433924-NO

PARC LAFAYETTE CONDOS and MAGAR &
COMPANY, an assumed name for MAGAR
MANAGEMENT CORPORATION,

Defendants-Appellees.

Before: Smolenski, P.J., and Michael J. Kelly and J.R. Weber*, JJ.

MICHAEL J. KELLY, J. (concurring).

I write separately because, although I agree with the majority's holding that the trial court erred in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7), I do not reach the majority's conclusion that the contractual release allows plaintiff to sue Parc Lafayette Condos for negligence, but limits plaintiff's potential recovery to the theory that the landlord failed to exercise reasonable care in repairing the garage door.

A plain reading of the disclaimer provision in the lease supports the conclusion that Parc Lafayette Condos did not disavow liability for injuries arising as a result of its negligence. The landlord expressly retained liability exposure for its "failure to perform a duty or negligent performance of a duty imposed by law." According to this language, plaintiff may sue the landlord for a breach of duty and damages arising therefrom, which is the very essence of an ordinary negligence claim. *Jenks v Brown*, 219 Mich App 415, 417; 557 NW2d 114 (1996). In light of my reading of the lease, I believe that plaintiff may sue to recover damages under the theory that Parc Lafayette failed to exercise reasonable care in undertaking repairs, and also under his theories of failure to warn and inspect.

As to all other aspects of the majority opinion, I concur.

* Circuit judge, sitting on the Court of Appeals by assignment.

/s/ Michael J. Kelly